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Attorneys for GOLDEN EMPIRE MORTGAGE, INC.,
dba CIB FUNDING

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

* * *

LOWELL LABERTEW, an individual; and SANDRA LABERTEW, an individual, Plaintiffs, vs. C&R FINANCIAL, INC., an entity of unknown form; GOLDEN EMPIRE MORTGAGE, INC., dba CIB FUNDING, a California Corporation; RAYMOND JACOB ROSKOWICZ, an individual; RICK WILKES, an individual; BEVERLEE WILKES, an individual; and DOES 1-10, inclusive, Defendants.	**CASE NO. 07CV2092W (LSP)** *Complaint filed 10/31/07* *Trial Date: Not Set* **EARLY NEUTRAL CASE EVALUATION STATEMENT OF DEFENDANT, GOLDEN EMPIRE MORTGAGE, INC., dba CIB FUNDING**
AND RELATED CROSS-ACTION.	**DATE: March 24, 2008** **TIME: 2:00 p.m.** **DEPT: G**

COMES NOW defendant, GOLDEN EMPIRE MORTGAGE, INC., a California corporation doing business as CIB FUNDING, and submits the following statement for the benefit of the court *and counsel* in advance of the Early Neutral Case Evaluation Conference.

I

PARTIES & COUNSEL

Plaintiffs, LOWELL and SANDRA LABERTEW (collectively ñLABERTEWò), are represented by Deborah L. Raymond, Esq. of the Law Offices of Deborah L. Raymond.

Defendant, C&R FINANCIAL, INC., a resigned California corporation, which has not appeared, was formerly operated by defendant, RAYMOND JACOB ROSZKOWICZ (ñcollectively ROSZKOWICZò), who has filed a Notice of Stay of Proceedings relating to his personal Chapter 7 bankruptcy case pending in the Central District of California under Case No. 6:08-bk-11303, which lists C&R FINANCIAL, INC. as an ñfdbaò of ROSZKOWICZ.

Defendant, GOLDEN EMPIRE MORTGAGE, INC., is a California corporation doing business in Lake Elsinore, California as CIB FUNDING (collectively ñGEMò), and is represented by Jeremy J. Schroeder, Esq. of Clifford & Brown.

Defendants and Cross-Claimants, RICK and BEVERLEE WILKES (collectively ñWILKESò), are individuals represented by Christina L. Geraci, Esq. of the Geraci Law Firm.

II

NATURE OF DISPUTE

From the pleadings GEM has deduced that LABERTEW entered into a potentially predatory lending scheme with ROSZKOWICZ in or about September-October 2006 whereby WILKES would fund a loan to LABERTEW using LABERTEWôS residence to collateralize the loan. At the time of the arrangement of the scheme ROSZKOWICZ was not an employee of agent of GEM,[1] but rather, was operating C&R FINANCIAL, INC. ROSZKOWICZ forwarded email correspondence to WILKES regarding the C&R FINANCIAL, INC. brokered loan on October 30, 2006.[2] The initial transaction documents were executed by LABERTEW on October 30, 2006[3] and the remainder on November 8, 2006.[4] WILKES executed their transaction documents in early November 2006.[5] Thereafter, LABERTEW and WILKES developed some kind of communication problems with ROSZKOWICZ, each hired counsel and subsequently began corresponding as reflected by the attachments to LABERTEWôS and WILKESôS pleadings. GEM had no role or stake in the transaction, but was nevertheless named in the resulting suit.

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[1] ROSZKOWICZ started his employment with GEM on October 31, 2006. (Exhibit ñ1ò hereto)
[2] WILKES Cross-Complaint Paragraph 14.
[3] Exhibit ñCOMP.-Aò to First Amended Complaint.
[4] Exhibit ñCOMP. B-3ò to First Amended Complaint.
[5] WILKES Cross-Complaint Paragraph 15.

III

GEM SHOULD NOT BE A PARTY

GEM has been named in this action based on an assumption that it had some role or stake in the transaction. Nothing could be further from the truth. Prior to October 31, 2006 ROSZKOWICZ operated his own real estate *brokerage* business,[6] C&R FINANCIALL, INC., that which arranged and consummated the deal between LABERTEW and WILKES. ROSZKOWICZ was subsequently employed with GEM from October 31, 2006 to August 31, 2007, but at no time did GEM have anything to do with the LABERTEW/WILKES transaction. In fact, ROSZKOWICZ's employment agreement with GEM specifically prohibited him from concurrently engaging in, or being employed by, a competing lender or broker.

LABERTEW and WILKES have assumed some connection to GEM based upon ***A)*** an unsigned Good Faith Estimate adorned with CIB FUNDING's name,[7] ***B)*** ROSZKOWICZ's September 12, 2007 email to the Wilkes with a footer implying a relationship with CIB FUNDING,[8] ***C)*** a purported oral statement at some point by ROSZKOWICZ that he was working for GEM, and ***D)*** a mistaken belief that ROSZKOWICZ affiliated his real estate license with GEM. Nothing more links GEM to this transaction.

A. HUD GOOD FAITH ESTIMATE:

The CIB FUNDING HUD Good Faith Estimate is unsigned and therefore not part of the operative transaction documents. Additionally, ROSZKOWICZ's unauthorized personal use of a single GEM form as a draft document does not form the basis for a claim of liability upon GEM. And, as set forth above, ROSZKOWICZ's operation of C&R FINANCIAL from and after October 31, 2006, his first day of employment, was violative of ROSZKOWICZ's employment agreement and undertaken without the knowledge, consent or acquiescence of GEM.

///

[6] Neither ROSZKOWICZ nor C&R FINANCIAL, INC. was a licensed *broker*.
[7] Exhibit "Comp. B-1" to First Amended Complaint.
[8] Exhibit "1" to WILKES Cross-Complaint.

B. SEPTEMBER 12, 2007 EMAIL:

ROSZKOWICZôS last day as a GEM/CIB employee was August 31, 2007, so he was not even an employee of GEM when the email was sent. He could have written ñPresident of the United Statesò and it would have had the same effect; no agency or fiduciary relationship. Further, the letter attached to the email requests that further correspondence on the dispute be forwarded to ROSZKOWICZôS personal mailing address in Corona, not GEM.

C. STATEMENT OF EMPLOYMENT WITH GEM:

If uttered between October 31, 2006 and August 31, 2007, this statement is a simple truth. Nevertheless, it neither sets forth an agency relationship, or a fiduciary duty, between GEM and LABERTEW or WILKES relating to the disputed transaction. Again, simply telling someone that he works for GEM does not result in liability for GEM. The lack of authority or consent is established by the absence of any document connecting GEM to this transaction, the fact that he arranged the deal before he was hired by GEM and the express provisions of his employment agreement. Additionally, the LABERTEWôS and WILKESôS could not have reasonably relied upon any such representation in light of the fact that C&R FINANCIAL, INC.ôS name adorns every executed document. Additionally, a little due diligence in running an internet California Department of Real Estate (ñDREò) search would have revealed that ROSZKOWICZ was not a licensed *broker* and that his *salesperson* license was not affiliated with GEM.

D. LICENSURE:

ROSZKOWICZôS DRE *salesperson* license history reveals that ROSZKOWICZ never affiliated his sales license with GEM, but does reflect the same Corona mailing address he used in the transaction and in the September 2007 email. (Exhibit ñ2ò hereto)

IV

DISMISSAL HAS BEEN SOUGHT INFORMALLY

In addition to telephone conversations with counsel for LABERTEW, correspondence setting forth GEMôS position was sent to counsel for LABERTEW on March 4, 2008 seeking a dismissal. (Exhibit ñ3ò hereto) A similar letter, incorporating greater detail and supporting documents, was forwarded to counsel for LABERTEW and WILKES on March 10, 2008 again seeking a dismissal. (Exhibit ñ1ò hereto) No response to these letters has been received.

V

REQUEST FOR EXCUSE FROM ATTENDANCE

As set forth above, GEM had no role, relationship or tie to the dispute among and between LABERTEW, ROSZKOWICZ and WILKES. Accordingly, GEM has no ability to assist or participate in effectuating monetary, declaratory or injunctive relief sought by any party. GEM, therefore, respectfully requests that it not be compelled to send an agent of its Bakersfield corporate offices to San Diego for the conference. GEM is willing to send the undersigned counsel to the Early Neutral Case Evaluation Conference with full settlement authority, *i.e.* a dismissal and cost waiver, and ability to immediately contact an authorized GEM representative by telephone during the conference.

VI

CONCLUSION

GEM respectfully requests that its agent be relieved from appearing personally at the conference, but will nevertheless incur the substantial expense of sending its counsel from Bakersfield to San Diego to be personally present to discuss the case with the court and counsel. Additionally, GEM respectfully requests the courtôs assistance in convincing LABERTEW and WILKES that GEM is not a proper party defendant to the First Amended Complaint or Cross-Complaint and should, therefore, be dismissed from the action.

Respectfully submitted,

DATED: March 21, 2008

CLIFFORD & BROWN

By /s/ JEREMY J. SCHROEDER
ARNOLD J. ANCHORDOQUY, ESQ.
JEREMY J. SCHROEDER, ESQ.
Attorneys for Defendant,
GOLDEN EMPIRE MORTGAGE, INC., dba
CIB FUNDING

EXHIBIT "1"

116ROS

GEM MORTGAGE
A Division of Golden Empire Mortgage, Inc.

New Hire Checklist – Loan Officer

Roszkowicz

Name: RAYMOND ROSZKOWICZ Location: LAKE ELSINORE, CA

Hire Date: 10.31.06 Position: LOAN OFFICER

Check one of the following:

- ☑ New
- ☐ Replacement

Replacing: ______________________

The following forms MUST be completed in full, required documentation attached, signed and dated where indicated. Incomplete packages will be returned and could delay the new hire process.

☑ Payroll Action Notice / Employee Change Notice	☐ W-4 Form
☐ Application	☐ Computer, Internet and Email Usage Policy
☐ Post Hire Information	☐ Fraud Prevention Policy Addendum
☐ Loan Officer DRE Requirement	☐ Sexual Harassment Policy & Procedure Acknowledgment
☐ Compensation Agreement	☐ Safety Handbook/ Employee Handbook Acknowledgment
☐ I-9 Form (Immigration Naturalization Form)	☐ Copy of Driver's License & Social Security Card

Office Manager:

Please check off each item listed above, review for completeness and return to Human Resources Department A.S.A.P. All documentation must be received and conform to requirements prior to pay issuance.

[signature] 10/31/06

Office Manager's Signature Date

EXHIBIT "2"

STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, *Governor*

DEPARTMENT OF REAL ESTATE
P. O. Box 187000
Sacramento, CA 95818-7000
(916) 227-0906

February 26, 2008

Jeremy Schroeder
Clifford & Brown
1430 Truxtun Ave, Ste 900
Bakersfield CA 93301

RE: Certified History Request

Enclosed please find the requested Certified License History for Raymond Jacob Roszkowicz.

Enclosure(s)

STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, *Governor*

DEPARTMENT OF REAL ESTATE
2201 Broadway
P. O. Box 187000
Sacramento, CA, 95818-7000
(916) 227-0906

February 26, 2008

RE: RAYMOND JACOB ROSZKOWICZ - S/01404833

******HISTORY CERTIFICATION******

Received Date	HISTORY
	Salesperson license originally issued in the employ of American Residential Funding, Inc., 3200 Bristol Street, 7th Floor, Costa Mesa 92626 as of 11-05-03
	Mailing address is 34178 Pheasant Run Circle, Wildomar 92595 as of 11-05-03
05-13-04	Employment discontinued from American Residential Funding, Inc. as of 05-10-04
06-21-04	Activated in the employ of Bush & Hewitt Holding, Inc., 41769 Enterprise Circle North, Suite 108, Temecula 92590 as of 06-21-04
10-07-05	Employment discontinued from Bush & Hewitt Holding, Inc. as of 10-07-05
12-21-05	Activated in the employ of Service First Mortgage Corp, 9170 Haven Avenue, Suite 105, Rancho Cucamonga 91730 as of 12-21-05
06-13-07	Mailing address changed to 3765 Delta Circle, Corona 92881 as of 06-13-07
10-19-07	Employing broker changed to 3BC Corporation, 27949 Starfall Way, Murrieta 92563 as of 10-19-07
10-19-07	Mailing address changed to 1240 East Ontario Avenue, #102 250, Corona 92881 as of 10-19-07
	Salesperson license expired 11-04-07

PRIOR DISCIPLINARY ACTION: NONE

I, Debra Blizzard, the Official Custodian of Records, hereby certify the foregoing is true and correct as extracted from the record of the Department of Real Estate this 26th day of February, 2008.

Debra Blizzard
Deputy Real Estate Commissioner
of the State of California

EXHIBIT "3"

STEPHEN T. CLIFFORD
JAMES E. BROWN
ROBERT D. HARDING
ARNOLD ANCHORDOQUY
PATRICK J. OSBORN
MICHAEL L. O'DELL
GROVER H. WALDON
JOHN R. SZEWCZYK
STEPHEN H. BOYLE†
JAMES B. WIENS
RICHARD G. ZIMMER
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T. MARK SMITH

OF COUNSEL
ANTHONY L. LEGGIO

† LLM TAXATION

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KATHY R. SMITH
OFFICE ADMINISTRATOR

www.clifford-brownlaw.com

March 10, 2008

BY FAX & US MAIL

50290-15

Ms. Deborah L. Raymond, Esq.
LAW OFFICES OF DEBORAH L. RAYMOND
445 Marine View Avenue, Suite 305
Del Mar, CA 92104

Ms. Christina L. Geraci, Esq.
GERACI LAW FIRM, APC
2030 Main Street, Suite 1300
Irvine, CA 92614

Re: Labertew v C&R Financial, et al.
US Dist. Court, Southern District of CA
Case No. 07CV2093W (LSP)

Dear Ms. Raymond & Ms. Geraci:

This correspondence follows a similar March 4, 2008 letter to Ms. Raymond seeking a voluntary dismissal of our client, Golden Empire Mortgage, Inc. dba CIB Funding ("GEM/CIB") from both of your respective operative pleadings. GEM/CIB had no role in this transaction and should be dismissed for the reasons set forth below.

Raymond Roszkowicz, by and through his dba C&R Financial, arranged the loan in question without any involvement of GEM/CIB. As far as we are aware, the only connection to GEM/CIB is that before and during the period Mr. Roszkowicz's employment with GEM/CIB he was operating a concurrent real estate business, C&R Financial. The concurrent operation of C&R Financial, a competing business, was in direct violation of his employment agreement with GEM/CIB. Thus, the operation of C&R Financial from and after October 31, 2006, his first day of employment, was violative of Mr. Roszkowicz's employment agreement and undertaken without the knowledge, consent or acquiescence of my client. In fact, Mr. Roszkowicz worked out the details of the transaction with the Labertew's and Wilkes's *before he started his employment with GEM/CIB*. (First Amended Complaint ¶ 12; Cross-Complaint ¶ 14)

The only tangible evidentiary links between GEM/CIB and this transaction are *1)* Mr. Roszkowicz's September 12, 2007 email to the Wilkes with a footer noting "CIB Funding" under his name, and *2)* a single unsigned HUD Good Faith Estimate which has CIB's name upon it. (Exhibit "Comp. B-1"). First, Mr. Roszkowicz's last day as a GEM/CIB employee was August 31, 2007. Second, the letter attached to the email requests that further correspondence on the dispute be forwarded to Mr. Roszkowicz's personal mailing address in Corona, not GEM/CIB. Third, the enclosed salesperson license history for Mr. Roszkowicz obtained from the Department of Real Estate ("DRE") reveals that Mr. Roszkowicz never affiliated his sales license with GEM/CIB, but does reflect the same Corona mailing address he used in the instant dispute. As to the unsigned HUD Good Faith Estimate, it is unsigned and therefore not part of the operative transaction documents. Mr. Roszkowicz's use of a single GEM/CIB form as a draft document does not form the basis for a claim of liability upon my client.

As to the allegations in the Complaint and Cross-Complaint that GEM/CIB owes some fiduciary duty to the Labertew's and/or the Wilkes's, neither will be able to establish such a duty. If Mr. Roszkowicz was representing that he was acting on behalf of GEM/CIB, such representations were made without the requisite authority to do so. The lack of authority or consent is established by the absence of any document connecting GEM/CIB to this transaction, the fact that he arranged the deal before he was hired by GEM/CIB and the express provisions of his employment agreement. Additionally, the Labertew's and Wilkes's could not have reasonably relied upon any such representation in light of the fact that C&R Financial's name adorns every executed document. Additionally, a little due diligence in running an internet DRE search would have revealed that Mr. Roszkowicz was not a licensed broker and that his sales license was not affiliated with GEM/CIB.

Other than the forgoing circumstantial strand of evidence connecting Mr. Roszkowicz and GEM/CIB in this transaction, the operative HUD Good Faith Estimate (Exhibit "Comp. A") and all other related transaction documents attached to the pleadings identify Mr. Roszkowicz and C&R Financial as the lender/broker. Mr. Roszkowicz's Chapter 7 Bankruptcy filing even lists C&R Financial as his former dba. Again, GEM/CIB had absolutely nothing to do with this transaction.

If there are additional facts or documents which provide a basis upon which GEM/CIB should be a party to this action, I would appreciate an opportunity to review and/or respond to them. In the absence of such evidence, we hereby request that the Labertew's and Wilkes's voluntarily dismiss GEM/CIB. If necessary, the dismissals can be filed without prejudice. We are also willing to discuss a cost waiver if the dismissal can be effectuated in advance of the court's March 24, 2008 Neutral Case Evaluation Conference.

If my client is compelled to remain in this action, thereby needlessly incurring costs and fees in defending against allegations which are wholly without merit, GEM/CIB will seek an appropriate award against both of your clients when it prevails. We trust that an objective review of the facts and evidence in this case will lead you both to the conclusion that it is in your respective clients' best interests to release GEM/CIB and move forward against the parties which actually were involved.

Thank you for your courtesy and cooperation. If there is anything we can do to assist you in effectuating a dismissal of GEM/CIB, please don't hesitate to contact me. We look forward to hearing from you soon.

Very truly yours,

JEREMY J. SCHROEDER

JJS:rmm
Enclosure:
ioc: Arnold J. Anchordoquy, Esq.
[BL/GEM/All Counsel-001/50290-15]

EXHIBIT "4"

STEPHEN T. CLIFFORD
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KATHY R. SMITH
OFFICE ADMINISTRATOR

www.clifford-brownlaw.com

March 4, 2008

BY FAX & US MAIL

50290-15

Ms. Deborah L. Raymond
LAW OFFICES OF DEBORAH L. RAYMOND
445 Marine View Avenue, Suite 305
Del Mar, CA 92104

Re: Labertew v C&R Financial, et al.
US District Court, Southern District of CA
Case No. 07CV2093W (LSP)

Dear Ms. Raymond:

Enclosed please find a copy of the salesperson license history for Raymond J. Roszkowicz obtained from the Department of Real Estate ("DRE"). As discussed in prior conversations, we request that your client again reconsider dismissing our client from this action.

As the DRE's records reflect, Mr. Roszkowicz's license was never recorded with the DRE as being affiliated with Golden Empire Mortgage, Inc./CIB Funding ("GEM/CIB"), and actually expired in the beginning of November 2007. As we have discussed by phone, GEM/CIB did not fund or participate in the loan at-issue in this dispute. Likewise, any action taken by Mr. Roszkowicz relating to your client's property was outside of his relationship with GEM/CIB, and as the records attached to your client's First Amended Complaint reflect, was related to his own business, C&R Financial. In fact, GEM/CIB's only connection to this transaction is a single, unsigned, HUD Good Faith Estimate which has CIB's name upon it. (Exhibit "Comp. B-1") Even if Mr. Roszkowicz provided this document to your client while he was technically employed by GEM/CIB, it does not establish that GEM/CIB had anything to do with the transaction. The operative, and signed, HUD Good Faith Estimate (Exhibit "Comp. A"), and all other related transaction documents for that matter, reflect C&R Financial as the lender.

As we have discussed, if there are additional facts or documents which provide a basis upon which GEM/CIB should be a party to this action, I would appreciate an opportunity to review and/or respond to them. Otherwise, we hereby renew our request that plaintiff dismiss GEM/CIB, without prejudice if that provides a great degree of comfort for your client. Additionally, we would be happy to provide a declaration of no interest in the property if you so require.

Thank you for your courtesy and cooperation. We look forward to hearing from you.

Very truly yours,

JEREMY J. SCHROEDER

JJS:rmm
Enclosure:
ioc: Arnold J. Anchordoquy, Esq.
[BL/GEM/Raymond-001/50290-15]